



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Texas Unemployment Compensation Commission  
Austin, Texas

Gentlemen:

Opinion No. 0-4667

Re: Payment of vacation salary to employees of the Texas Employment Service, who have resigned and entered private employment.

Your letter of June 19, 1942, referring to the payment of salary to former employees of the Texas Unemployment Commission during their vacation period, has been given our careful consideration.

You state that:

"By executive order of the President, the personnel of the Texas State Employment Service was transferred in its entirety to the United States Employment Service, and was given Civil Service status under the Federal Government. At the time of such transfer, contemplating a return of the Employment Service and its employees to the Unemployment Commission at the end of the present war, the employees of this Commission so transferred were put upon a status of 'leave without pay'. This means that the Commission under the Merit System of Personnel Administration, which applies to its personnel, may reinstate such transferred employees when conditions permit.

"At the time of their transfer to the United States Employment Service, these employees, under our Merit System of Personnel Administration, had acquired certain credits as to annual leave or vacation leave with pay."

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As we understand your letter, you now desire to place those employees, especially those who have ceased to work for the Federal Government, on your pay roll for a sufficient length of time for said employees to draw their salary for the vacation period, to which they would have been entitled if they had continued in your employment.

In 1941 the Legislature included in the General Appropriation Bill an appropriation for your Department of \$150,000.00, and in connection with said specific appropriation stated:

"Salaries to be paid according to the classifications of the Social Security Board to employees selected and rated under the personnel plan in effect between the Social Security Board and the State agency. \* \* \* Salaries of the employees of the Unemployment Compensation Commission and members of the Commission shall be paid in accordance with the agreement made between the Commission and the Social Security Board, but in no case shall such salaries be less than those authorized by the act creating the Unemployment Compensation Commission."

Said provisions of the Appropriation Bill above quoted do delegate to the Social Security Board and the members of the Commission the authority to classify and rate the personnel of this Commission. However, we call your attention to the fact that the authorization provides that salaries shall be paid according to the agreements made by the named parties.

In your letter you state the Social Security Board now desires you to replace certain persons on your payroll for a specified number of days, not for the purpose of performing any actual service, but for the sole purpose of permitting those persons who formerly were employed by you to draw compensation or pay for their vacation period. In our opinion, the provisions of the Appropriation Bill above quoted, do not relax the legislative control over said State agency except in the manner recited.

There is attached to the General Appropriation Bill of 1941 a number of "general provisions"; among these is subsection 8, which reads as follows:

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"Vacation allowance. Department employees shall, without deduction in salary, receive not exceeding twelve days' vacation, exclusive of Sundays or legal holidays, on which State offices are closed for each State fiscal year. \* \* \* Provided, that no employee for whom a salary is hereby appropriated shall receive compensation while on vacation unless he or she has been an employee of the department for not less than six calendar months preceding the vacation period."

In our opinion, you cannot now place the persons who were formerly in your employ, but who are now otherwise employed, upon your payroll, unless they are to and do actually render services to your Commission. You could not place anyone on the payroll simply for the purpose of allowing him to draw compensation for an earned vacation period prior to the time he ceased to be in your employ.

Our Opinion No. 0-2814 is pertinent, we think, to the present situation here involved, and we enclose a copy of that opinion for your consideration.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Geo. W. Barcus*

Geo. W. Barcus  
Assistant

GWB-MR

Enclosure

APPROVED JUL 14, 1942

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

